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| SERIAL NUMBER | FILING DATE | FIRST NAMED APPLICANT | ATTORNEY DOCKET NO. |
|---------------|-------------|-----------------------|---------------------|
| 08/026,736    | 03/05/93    | ALIZON                | M 3495.0010-12      |

18M2/0103  
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|                     |              |
|---------------------|--------------|
| EXAMINER<br>FETTSIE |              |
| ART UNIT            | PAPER NUMBER |
| 1506                |              |

DATE MAILED:

01/03/96

**Please find below a communication from the EXAMINER in charge of this application.**

Commissioner of Patents

## Office Action Summary

|                                      |                                      |
|--------------------------------------|--------------------------------------|
| Application No.<br><b>08/026,736</b> | Applicant(s)<br><b>Alizon et al.</b> |
| Examiner<br><b>FEISEE</b>            | Group Art Unit<br><b>1806</b>        |



Responsive to communication(s) filed on Sep 22, 1995

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

### Disposition of Claims

Claim(s) 11, 13, and 15 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 11, 13, and 15 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) 07/158,652.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The only rejection outstanding is discussed below.

Claims 11,13 and 15 remain rejected under 35 U.S.C. § 102(b) as being anticipated by Kalayanarman or Schupbach et al as evidenced by Arya et al., Wong-Staal and Cohen et al. for reasons previously set forth.

Applicant argues that the examiner has erroneously interpreted isolated to mean separated from the body, and in doing so has made the statement that "isolated" is equivalent to "separated from the body". The examiner has interpreted the language "isolated" in its broadest sense as is incumbent on her to do, especially in view of the fact that there is no degree of purity anywhere in the claims or in the specification. If the antibodies of the claims are isolated so as to be useful for diagnostic applications, than certainly the product of Kalayanarman and Schupbach et al. fall in this category. Nevertheless, the definition of "isolate" in Stedman's Medical Dictionary, 25th edition is "To separate, to set apart others", "To free from chemical contaminants". Clearly, the separation of the serum from other contaminants in the blood, as well as from the host meets this definition.

Applicant also argues that the references of Kalayanaraman and Schupbach do not expressly teach the claimed antibodies, however, the three

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evidentiary references teach that in the serum of an infected individual, there undeniably exists antibodies which bind to exactly the sequences recited in the claims. These references prove that the claimed antibodies were already present known in the prior art.

5           Applicant further argues that the anticipatory references are not enabling because the sequences were not known. However, because the serum has the specificities which bind to the sequence, knowledge of the sequence is not necessary, it is the antibodies and not the sequence which is being claimed. The anticipatory references teach that an infected individual  
10          possesses these specificities within his repertoire of antibodies.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

15          A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED,  
20          AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lila Feisee whose telephone number is (703) 308-2731. The examiner can normally be reached on Mondays-Fridays from 9:00-5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marian Knode, can be reached on (703) 308-4311. The fax number for this Group is (703) 308-4227.

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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

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Lila Feisee/lf  
20 January 2, 1996



LILA FEISEE  
PRIMARY EXAMINER  
GROUP 1800